

# **Secondhand Smoke and Multi-Unit Dwellings**

## **Landlord Information**

### **Do I, as a landlord, have the right to ban smoking in my properties?**

Yes, landlords may voluntarily institute smoking bans in their buildings. Smoke-free policies are not discriminatory since there is no protected legal right to smoke. It is up to you if you want to ban smoking. It does not matter whether your intention is to eliminate the health risk associated with secondhand smoke or simply want to reduce smoke or fire damage in your building.

### **Why ban smoking?**

#### **1. To Save Money**

- Implementing a smoke-free policy can save money in turnover costs since without smoke the wear and tear on the unit is reduced. Turnover items such as carpet burns, floor repairs and wall discoloration can all be avoided.
- By reducing the risk of fire in the building, landlords can also potentially save on insurance premiums and eliminate a potential source of property damage.

#### **2. To Attract Tenants**

- Studies have shown that many individuals want to live in smoke-free housing, and some would even be willing to pay slightly more for a smoke-free unit.
- Only 18.1 percent of Massachusetts adults smoke. Presumably, the other 81.9 percent either prefer or do not mind living in smoke-free housing.<sup>i</sup>
- Nationally, approximately 65-75% of multi-unit residents prefer smoke-free housing.<sup>ii</sup>

#### **3. To Protect Health**

- Secondhand smoke is a known carcinogen.
- Secondhand smoke can aggravate conditions such as asthma, allergies, heart disease and more.
- Secondhand smoke harms children. Among other problems, it is a risk factor for childhood asthma, other respiratory conditions, and is associated with Sudden Infant Death Syndrome (SIDS).

#### **4. To Protect Against Lawsuits and other Legal Action**

- Non-smoking tenants can bring legal action against their landlord under a number of common law theories including:
  - Negligence
  - Breach of the Covenant of Quiet Enjoyment
  - Nuisance
  - Violation of the Warranty of Habitability
  - Intentional infliction of emotional distress
- Tenants with qualifying disabilities may seek action under the Americans with Disabilities Act and the Fair Housing Act.

### **How hard is it to enforce a smoke-free policy?**

Enforcement is not difficult. Once a ban is implemented, violations will be so noticeable that other tenants are likely to bring them to the landlord's attention. It is a self-enforcing policy. With a policy in place it is far easier to negotiate disputes between smokers and non-smokers than without one.

### **Possible steps I could take to go smoke-free:**

- 1. Make a plan.** Start by creating a plan to make the entire building smoke-free.
- 2. Hold a Meeting.** Gather with tenants to discuss the possible future change. There may be resistance, but remember, non-smoking tenants have rights under their leases too.
- 3. Review Existing Leases.** Review the legal information in leases concerning your rights and your tenants' rights.
- 4. Amend New Leases.** Change the language of your lease to include your new smoke-free policy. When new tenants sign on, your policy will be crystal clear.
- 5. Promote Your Status.** Begin advertising your smoke-free status to gain new tenants who appreciate a smoke-free environment.<sup>iii</sup>

### **Are there examples of existing smoke-free leases that I can review?**

Yes. Check out some of these websites for more information.

- Smoke-free housing site in Maine:  
<http://www.smokefreeforme.org/landlord.php?page=Model+Lease+Language>
- Smoke-free housing in Michigan: <http://www.mismokefreeapartment.org/modellease.pdf>
- Smoke-free apartments: [http://www.smokefreeapartments.org/model\\_policy.html](http://www.smokefreeapartments.org/model_policy.html)

### **Resources**

Massachusetts Tobacco Control Program (Department of Public Health) –  
<http://www.mass.gov/dph/mtcp/home.htm>

Massachusetts Association of Health Boards – <http://www.mahb.org/>

Fair Housing Act: <http://www.usdoj.gov/crt/housing/title8.htm>

Smoke Free Apartments – [www.smokefreeapartments.org](http://www.smokefreeapartments.org)

Smoke-free housing site from Maine - <http://www.smokefreeforme.org/landlord.php>

Americans for non-smokers' rights smoke-free housing page. [www.no-smoke.org/htmlpage.php?id=181](http://www.no-smoke.org/htmlpage.php?id=181).

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<sup>i</sup> 2005 BRFSS

<sup>ii</sup> Smoke-free Housing Coalition, [http://www.smokefreeforme.org/presentation/survey\\_results.pdf](http://www.smokefreeforme.org/presentation/survey_results.pdf)

<sup>iii</sup> Smoke-free Housing Coalition, [www.smokefreeforme.org](http://www.smokefreeforme.org)